No. 08-1212

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

JEAN BOUDREAUX, AND THE VICTIMS OF THE FLOOD ON APRIL 6, 1983, ON THE TANGIPAHOA RIVER,

Petitioners,

v.

THE STATE OF LOUISIANA, DEPARTMENT OF TRANSPORTATION, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the New York Court of Appeals

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioners secured a judgment against Louisiana in Louisiana state court, but they could not enforce that judgment because Louisiana's limited waiver of sovereign immunity makes any such judgment contingent on an authorization by the Louisiana Legislature to pay the judgment. Petitioners had tried to bypass Louisiana's sovereign immunity, by seeking to enforce the judgment in New York state court. They invoked the Full Faith and Credit Clause, which requires that the New York courts accord Louisiana judgments *the same* credit Louisiana courts would accord them. Was the New York Court of Appeals correct in holding that the Full Faith and Credit Clause does not require the New York courts to accord the Louisiana judgment more credit than the Louisiana courts would?

LIST OF PARTIES AND RULE 29.6 STATEMENT

All parties to the proceedings in the New York Court of Appeals are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

Not applicable.

BRIEF FOR THE RESPONDENTS IN OPPOSITION

INTRODUCTION

Petitioners are Louisiana residents who obtained a final money judgment in a tort suit filed against the State of Louisiana, in Louisiana state court. No court in Louisiana can legally enforce that judgment because Louisiana law prohibits a court from enforcing a judgment against the State unless the Louisiana Legislature appropriates funds from the State's treasury to pay it – a step the Louisiana Legislature has declined to take.

In an effort to bypass the limitations Louisiana has placed on its waiver of sovereign immunity, petitioners turned to the New York courts to enforce a Louisiana judgment that no Louisiana court would enforce. They insist that the Full Faith and Credit Clause somehow requires a New York court to accord *more* faith and *more* credit to the Louisiana judgment than the Louisiana courts do. In particular, they insist that the Clause requires New York courts to give full faith and credit to the Louisiana judgment, but to give no faith and no credit to the Louisiana constitutional and statutory limitations that made the judgment contingent.

No court anywhere in the country has ever reached such a conclusion. The New York Court of Appeals broke no new ground when it unanimously rejected petitioners' position, App. at 6a – a position that the trial court dismissed as "frivolous," *id.* at 46a. The New York Court of Appeals applied settled constitutional principles to the idiosyncrasies of

Louisiana law. This Court should deny the petition.

STATEMENT

The Petitioners Obtain a Judgment in Louisiana

In April 1983, floodwaters damaged several hundred homes and businesses in Tangipahoa Parish, Louisiana. App. at 2a. Petitioners, Louisiana residents harmed by the flood, filed a class action suit blaming the Louisiana Department of Transportation's negligent construction of a bridge. *Id.* After prevailing in the trial court and appellate courts, Petitioners obtained a final judgment in the Louisiana Court of Appeal. *Id.* The Louisiana Supreme Court denied a writ of certiorari. *Boudreaux v. Louisiana,* 05-2242 (La. 2/17/06); 924 So.2d 1018.

Louisiana law considers this judgment "final." But it is nevertheless unenforceable in any Louisiana court. Louisiana waives sovereign immunity for tort suits, but only to a limited degree. The Louisiana Constitution provides that a money judgment against the State cannot be paid "except from funds appropriated therefor by the legislature or by the political subdivision against which the judgment is rendered." La. Const. art. XII, § 10(c).

Petitioners have petitioned the Louisiana Legislature to appropriate funds for payment of the judgment. App. at 11a. The Legislature has declined to appropriate the funds. Petitioners have also attempted to enforce the Louisiana judgment by docketing it in eighteen Louisiana parishes. App. at 2a. Docketing, however, is a futility in this case because the State's sovereign immunity waiver

makes legislative appropriation the exclusive means of enforcement. No court in Louisiana will enforce the judgment.

Petitioners Unsuccessfully Attempt to Enforce the Louisiana Judgment in New York

Petitioners then turned to the New York courts, in hopes of persuading them to enforce a Louisiana judgment that no Louisiana court will enforce. In August 2006, petitioners attempted to docket their Louisiana judgment in the office of the County Clerk of New York County pursuant to New York Civil Practice Law & Rules ("CPLR") Article 54 ("Enforcement of Judgments Entitled to Full Faith and Credit"). App. at 2a. Their plan was to find assets of Louisiana in New York and to execute on them using the CPLR procedure – even though the Louisiana Legislature did not take the steps necessary to make the judgment enforceable and even though the limitations on Louisiana's sovereign immunity waiver insulated those assets. *Id.*

Noting this "infirmity," the New York trial court precluded petitioners from docketing the judgment. App. at 42a, 48a. The court reasoned that the provision of the Louisiana Constitution requiring legislative approval of any judgment effectively stayed enforcement of the judgment. App. at 44a-47a.

On appeal, the Appellate Division affirmed. App. at 16a. The Appellate Division recognized that the Louisiana judgment was a contingent award of damages and should not be considered an enforceable "judgment" within the meaning of CPLR Article 54. App. at 14a. The court refused to accord

the judgment greater effect in New York than it would have in Louisiana. *Id.*

The New York Court of Appeals unanimously affirmed. It reasoned that New York courts are not required to enforce a money judgment against Louisiana that Louisiana's own courts are legally barred from enforcing. App. at 2a. The Court of Appeals noted that Louisiana courts know that a judgment creditor of the State may be left unable to collect when the Legislature refuses to appropriate the funds necessary to satisfy a judgment. App. at 5a. It further observed: "In seeking to enforce the Louisiana judgment in New York, plaintiffs attempt to circumvent Louisiana's clear mandate that no judgment rendered against it shall be paid unless its Legislature appropriates funds." App. at 4a. The Full Faith and Credit Clause, the court concluded, does not override this mandate: "what the Full Faith and Credit Clause requires is that a court provide a foreign judgment with the same credit, validity, and effect it would have in the state that pronounced it." App. at 4a-5a. The only way to give effect to Louisiana law, the Court of Appeals concluded, was to refuse to enforce the judgment in New York exactly as a Louisiana court would. App. at 5a-6a.

The Court of Appeals further held that the doctrine of comity did not require enforcement of the Louisiana judgment. App. at 6a. To the contrary, comity counseled that the Court of Appeals "defer to the Constitution of Louisiana and the public policy embodied within the statute enacted by its legislature," *id.*, which, in this case meant that the judgment could not be enforced except by an appropriation of the Louisiana legislature.

REASONS FOR DENYING THE PETITION

This Court should deny certiorari for two reasons. First, by petitioners' own admission, this case involves the application of "settled law" to a peculiar set of facts. Pet. at 16. Petitioners do not even try to point to any opinion from any court that reached the opposite conclusion on similar facts. There are no directly contrary holdings because Louisiana's limitation on enforcement of judgments against the State is virtually unique. *See infra* Point I. Second, the New York Court of Appeals, applying long-settled principles of law, reached the correct conclusion. *See infra* Point II.

I. THE LOWER COURTS ARE NOT SPLIT AS TO HOW THE FULL FAITH AND CREDIT CLAUSE APPLIES TO THE UNIQUE FACTS OF THIS CASE.

The petition's central theme is that the Court of Appeals' ruling is "completely inconsistent with over a century of settled full faith and credit law as established and re-emphasized by this Court time and again." Pet. at 4; *see id.* at 16. Petitioners do not suggest that the New York Court of Appeals' holding conflicts directly with the holding of the highest court of any other state, or with the holding of any federal court of appeals, on similar facts.

Specifically, petitioners do not cite a single case, like this one, with the following elements: (1) a state court in State X renders a judgment; (2) the law of State X provides, as a matter of sovereign immunity, that the judgment cannot be enforced against State X; and (3) a court in State Y nevertheless enforces the judgment, in defiance of State X's sovereignty. We are unaware of any case that so holds. In fact,

we are unaware of any case – on either side of ledger – that presents this peculiar scenario.

The reason is plain. Louisiana's waiver of sovereign immunity is virtually unique among the states. Most states that waive sovereign immunity grant state courts the power to enforce judgments against the state.[1] Some grant state courts the power to enforce judgments, but dictate from where the funds are to be paid.[2] Others grant state courts the power to enforce judgments, but impose upon the state legislature a legal obligation to appropriate the funds, so that the funds are properly budgeted and accounted for.[3] But so far as we have been able to ascertain only one other state – Hawaii – that takes the same approach as Louisiana, in making the enforceability of the judgment contingent on legislative authorization. *See* Haw. Rev. Stat. § 662-11 (2008) (larger "[c]laims arbitrated, compromised, or settled . . . shall be paid only after funds are appropriated by the legislature for the payment of those claims").

If, as petitioners insist, the law has been "settled" for a century, then this Court's intervention is unnecessary. By petitioners' own terms, there is no

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[1] *See, e.g.*, Idaho Code Ann. § 6-922 (2009); Iowa Code § 669.11 (2009); Me. Rev. Stat. Ann. Court Procedure – Civil 14 § 8115 (2009); Minn. Stat. § 3.736 (2009); Neb. Rev. Stat. § 13-918 (2008); N.J. Stat. Ann. § 59:12-1 (2009); Nev. Rev. Stat. § 41.037 (2008); S.D. Codified Laws § 21-32-14 (2008).

[2] *See, e.g.*, Idaho Code Ann. § 6-922 (2009); Iowa Code § 669.11 (2009); Me. Rev. Stat. Ann. Court Procedure – Civil 14 § 8115 (2009); Minn. Stat. § 3.736 (2009); Nev. Rev. Stat. § 41.037 (2008).

[3] *See, e.g.*, Neb. Rev. Stat. § 13-918 (2008); N.J. Stat. Ann. § 59:12-1 (2009); S.D. Codified Laws § 21-32-14 (2008).

compelling reason for this Court to assume the unaccustomed role of court of errors to correct a supposed misapplication of "settled" principles to a fact scenario that has never before arisen, and might never again arise.

II. THE COURT OF APPEALS' HOLDING IS CONSISTENT WITH ESTABLISHED DOCTRINE ON THE FULL FAITH AND CREDIT CLAUSE.

Petitioners are correct when they note that the Full Faith and Credit Clause doctrine applicable here is "settled." *See* Pet. at 16. They are just wrong about how those settled principles apply to the facts of this case. The truth is that the New York Court of Appeals followed settled law, and petitioners are the ones advocating a radical – indeed, unprecedented – departure from long-accepted constitutional doctrine.

A. The Settled Rule Is that a State Court Need Not Give Greater Credit to the Judgment Rendered By a Sister State than Would the Courts in the Rendering State.

The United States Constitution provides that "Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State." U.S. Const. art. IV, § 1. The purpose of this clause was to avoid conflicts created by courts in different states adjudicating the same matters, and to "transform[] an aggregation of independent, sovereign States into a nation." *Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948). The operative principle has been the same not just for a century, but for nearly *two* centuries: "the judgment

of a state court should have *the same* credit, validity and effect, in every other court of the United States, which it had in the state where it was pronounced." *Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n,* 455 U.S. 691, 704 (1982) (emphasis added) (citing *Hampton v. McConnel,* 16 U.S. (3 Wheat.) 234, 235 (1818)).

This Court has never read this clause to require an enforcing state to give a judgment *greater* effect than it would have in the courts of the rendering state. To the contrary, this Court has held that under the Full Faith and Credit Clause, "a judgment has no constitutional claim to a more conclusive or final effect in the State of the forum than it has in the State where rendered." *New York v. Halvey,* 330 U.S. 610, 614 (1947). Therefore, "the State of the forum has at least as much leeway to disregard the judgment, to qualify it, or to depart from it as does the State where it was rendered." *Id.* at 615.

B. The New York Court of Appeals Faithfully Followed the Settled Rule By Declining to Give the Louisiana Judgment Greater Credit Than Louisiana Courts Would Accord It.

Following this settled rule, the New York Court of Appeals unanimously concluded that the New York courts are not required to enforce a Louisiana judgment that the Louisiana courts, themselves, would be constitutionally barred from enforcing, because the judgment was subject to the condition that payment could be made only by specific legislative appropriation. That conclusion was correct.

It is undisputed that petitioners' judgment is

judicially unenforceable in Louisiana as a matter of state law. Pet. at 4. The constitutional provision, quoted above, is unequivocal that:

> No judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated by therefor by the legislature or by the political subdivision against which the judgment is rendered.

La. Const. art. XII, § 10(c). There is no serious question that this provision limits the State's waiver of its sovereign immunity.[4]

The statute implementing Louisiana's constitutional sovereign immunity waiver explains why the State thought it important to impose the limitation:

> (1) That judgments against public entities have exceeded ability to pay on current basis.
>
> (2) That the public fisc is threatened by these judgments to the extent that the general health, safety and welfare of the citizenry may be threatened.

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[4] At points petitioners seem to dispute that this condition represents a limitation on the scope of Louisiana's waiver of sovereign immunity. *See* Pet. at 19-20. But whether the New York Court of Appeals correctly interpreted a provision of the Louisiana Constitution as a limitation on the waiver of sovereign immunity is a state law question not worthy of this Court's attention.

> (3) That the limitations set forth in this Section are needed to curb the trend of governmental liability abuses, to balance an individual's claim against the needs of the public interests and the common good of the whole society, and to avoid overburdening Louisiana's economy and its taxpaying citizens with even more new and/or increased taxes than are already needed for essential programs.

La. Rev. State. Ann. § 13:5106(F) (2008).

Louisiana courts have consistently recognized the Legislature's exclusive control over the decision to allow the enforcement of a money judgment against the State. As the Supreme Court of Louisiana recently explained: "the judicial branch is empowered to render judgments against the state. However, the constitution does not provide the judiciary with the ability to execute those judgments. The constitution reserves that power to the legislature." *Newman Marchive P'ship Inc. v. City of Shreveport*, 07-1890, p. 4 (La. 4/8/08); 979 So.2d 1262, 1265 (internal citations omitted).[5]

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[5] *See also Henderson v. Bigelow*, 07-1441, p. 16 (La. App. 4 Cir. 4/9/08); 982 So.2d 941, 950 ("The constitution vests in the legislature—*not the judiciary*—the discretionary function of appropriating public funds.") (emphasis in original); *Hoag v. State*, 04-0857, p. 8 (La. 12/1/04); 889 So.2d 1019, 1025 ("Although we recognize that plaintiffs are entitled to payment of the judgment, a writ of mandamus directing the legislature to appropriate funds is an impermissible usurpation of legislative power by the judiciary. So finding we are compelled to exercise judicial restraint and refrain from encroaching upon the constitutional delegation of power to the legislative branch by compelling it to appropriate funds to pay the *Hoag I* judgment.").

Thus, while Louisiana law may refer to a court's judgment against the State as "final," *see* La. Code Civ. Proc. Ann. art. 1841 (2003) ("A judgment that determines the merits in whole or in part is a final judgment."), the consequence of these constitutional and statutory provisions is to make that judgment contingent: It is unenforceable unless and until the Legislature embraces it and appropriates money to cover it.

In insisting that the New York courts must nevertheless enforce a Louisiana judgment that Louisiana courts, themselves, are prohibited from enforcing, petitioners are urging a drastic departure from settled law. They are arguing that New York courts must give *more* faith and *more* credit to a Louisiana judgment than the Louisiana courts themselves would accord it. They are insisting that the New York courts give full credit to the Louisiana judgment, but *no* credit to the State's constitutional limitation on its own waiver of sovereign immunity.

C. Petitioners' Arguments, and Analogies to Other Lines of Cases, Are Unpersuasive.

Unable to point to any case with facts even close to the facts of this case, petitioners invoke several lines of cases that have no bearing on the question at issue here. We address each argument in turn.

"Final" judgments are preclusive. Petitioners' central argument revolves around splicing a part of Louisiana substantive law (the conditional waiver of sovereign immunity that allows litigation of the tort claim) to parts of New York procedural law (providing for the enforcement of foreign judgments). Their argument goes something like this: *Louisiana*

law refers to the judgment as "final," even if it is contingent on legislative authorization. Pet. at 17-18 (quoting La. Code Civ. Proc.. art. 1841). *New York* law says that "final" judgments from sister states must be docketed. Pet. at 6 (citing CPLR art. 54). Ergo, Louisiana's final judgment must be docketed under New York law.

The problem with this analysis is that New York's highest court, in this case, interpreted the New York statute *not* to require any such thing, because Louisiana's judgment was not "final" within the meaning of New York's enforcement statute. *See* App. at 6a. Petitioners object that this conclusion is incorrect. But it is not up to this Court to override state courts on their interpretation of their own statutes.

So petitioners then try to federalize the requirement. They do so mainly by snatching quotes from various cases out of context. For example, they quote (Pet. at 15) from cases to the effect of: "A *final* judgment in one State . . . qualifies for recognition throughout the land." *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998) (emphasis added; other citations omitted). But those cases all involved judgments that were "final," in every sense of the term. Those cases did not involve the oddity of a state judgment that might have been "final" in form, but contingent in fact. So whatever they said about "truly" final judgments has no bearing on Louisiana's unique type of judgment in a case applying the State's sovereign immunity waiver. But, in any event, the cases cited in that passage were not about the requirement that courts enforce the judgments of sister states. They were about the completely different, and irrelevant, principle of

claim preclusion – that the final determination of any issue fully and fairly considered must be given preclusive effect.[6] Because Louisiana did not try to *re*litigate any facts or law before the New York courts, the preclusion cases are irrelevant.

Courts of one state do not recognize a sister state's sovereign immunity. Citing *Nevada v. Hall*, 440 U.S. 410 (1979), and two New York State cases,[7] petitioners contend that New York courts should not give effect to Louisiana's limitation on sovereign immunity that allows a judgment against the state to be enforced by specific legislative appropriation. Pet. at 19-20. *Hall* and the two New York cases, however, involved transactions that the defendant state had voluntarily conducted in the forum state, and litigation in the forum state where jurisdiction was otherwise established over the defendant state. This case is totally different. Petitioners obtained a judgment against Louisiana

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[6] *See Baker*, 522 U.S. at 233 (1998) ("For claim and issue preclusion (res judicata) purposes, in other words, the judgment of the rendering State gains nationwide force."); *Durfee v. Duke*, 375 U.S. 106, 115 (1963) ("The question remains whether, once a matter has been fully litigated and judicially determined, it can be retried in another State in litigation between the same parties. Upon the reason and authority of the cases we have discussed, it is clear that the answer must be in the negative."); *Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n.*, 455 U.S. 691, 710 (1982) ("The issue having been fully and fairly considered by the Indiana court, its final determination was entitled to full faith and credit in North Carolina).

[7] *Deutsche Bank Sec., Inc. v. Montana Bd. of Inv.*, 7 N.Y.3d 65 (2006) and *Ehrlich-Bober & Co., Inc. v. Univ. of Houston*, 49 N.Y.2d 574 (1980).

in that State's own courts and pursuant to that State's sovereign immunity waiver, concerning conduct that all occurred in Louisiana. The conditions attached to Louisiana's sovereign immunity waiver are baked into the judgment. This case does not involve litigation against Louisiana that properly occurred in the courts of New York or some other state. Nothing happened outside of Louisiana here except for petitioners' carrying a foreign judgment to New York. The Full Faith and Credit clause requires New York courts to honor Louisiana law, not to cast it aside.

"Enforcement measures" follow the forum. Petitioners next try another way to federalize the rule that New York cannot enforce Louisiana limitations on enforcement of Louisiana judgments. They quote (Pet. at 22) another snippet from the same case, to the effect that: "Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law." *Baker*, 522 U.S. at 235 (citing *Bailey v. Cohen*, 38 U.S. (13 Pet.) 312, 325 (1839)). Petitioners interpret this proposition as a command that New York courts must completely ignore the legal constraints of Louisiana law.

As petitioners confirm with their numerous citations, the classic example of this rule is where a plaintiff secures a judgment in State X, but does not succeed in collecting using methods available in State X – so the plaintiff files the judgment in State Y, which has other enforcement tools. Petitioners' particular example are cases in which the rendering state does not allow wage garnishment but the

enforcing state does.[8] These cases hold that just because State X does not allow its court to garnish wages to collect an otherwise enforceable judgment does not mean that State Y cannot provide for that vehicle of enforcement.

That is a completely different scenario. In those cases, there was no question that State X's judgment was enforceable in State X. There was no bar to collecting the judgment. There was nothing in the law of State X that made the judgment contingent on some future state action. And there was certainly nothing in the law limiting the waiver of sovereign immunity. Not so here, where: (1) the New York courts are recognizing a condition inherent in the Louisiana judgment and inextricably tied to Louisiana's sovereign immunity; and (2) Louisiana law emphatically does not treat the judgment as enforceable – by any means, except legislative authorization.[9]

Privileges and Immunities Clause. Finally,

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[8] *See Morris Plan Indus. Bank v. Gunning*, 67 N.E.2d 510, 513 (N.Y. 1946) (determining New York court could garnish wages of a nonresident employed by a corporation doing business in New York to enforce judgment rendered in Pennsylvania); *People's Nat'l Bank v. Hitchcock*, 428 N.Y.S.2d 850, 852 (Sup. Ct. 1980) (same); *see also Downs v. Am. Mut. Liab. Ins. Co.*, 243 N.Y.S.2d 640, 645 (App. Div. 1963) (determining New York resident could use New York judgment enforcement procedures to garnish wages of a nonresident employed in foreign state to enforce judgment rendered in New York).

[9] Once again, much of petitioners' argument here seems to revolve around trying to prove that the New York Court of Appeals misapplied New York law – an issue that is neither within this Court's domain nor worthy of this Court's attention. *See* Pet. at 24-26 (quoting a New York case at length, and citing six others).

petitioners assert that the Privileges and Immunities Clause requires reversal because "New York may not constitutionally close the doors of its courts to out of state citizens when they are freely open to citizens of New York." Pet. at 27. The short answer is that petitioners never raised the Privileges and Immunities Clause in any of the courts below, and cannot raise it for the first time now. *See Youakim v. Miller,* 425 U.S. 231, 234 (1976) ("Ordinarily, this Court does not decide questions not raised or resolved in the lower court.").

In any event, petitioners are wrong. As petitioners correctly point out, the Privileges and Immunities Clause requires only that "any policy the State may choose to adopt must operate in the same way on its own citizens and those of other states." Pet. at 28 (quoting *Chambers v. Baltimore & Oh. R.R. Co.*, 207 U.S. 142, 149 (1907)). New York law *does* apply the same to both New York *citizens* and Louisiana *citizens*. If a New York citizen had secured a judgment against Louisiana in Louisiana state court, he, too, would be unable to enforce the judgment in New York, absent an appropriation from the Louisiana Legislature. To be sure, New York law treats Louisiana *judgments* differently from New York *judgments*, but that is because Louisiana law says Louisiana judgments *are* different.

CONCLUSION

The petition for a writ of certiorari should be denied.

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